Supreme Court, U.S.
FILED
FEB 19 2002

No. 01-913

IN THE

Supreme Court of the United States

Leland W. Jacobs,

Petitioner,

v.

Rice County, Minnesota

Respondent.

On Petition For Writ Of Certiorari
To The Minnesota Supreme Court

PETITIONER'S REPLY BRIEF

Leland W. Jacobs, *pro se*
576 North Lexington Parkway
Saint Paul, Minnesota 55104
Tel: 612.384.8744

10PP

TABLE OF CONTENTS

Introduction 1

Rice County states that it is to be presumed that the petitioner did receive notice 2

Rice County states that the trial court and/or the administrator's office would be unaware of any appeal that the petitioner was waiting to pursue 3

Conclusion 6

TABLE OF AUTHORITIES

Federal Authorities:

Fourteenth Amendment, U.S. Constitution 6,7

State Authorities:

Holmberg v. Holmberg, et al.,
588 N.W.2d 720 (Minn.1999) 4

In re Welfare of L.A.F.,
554 N.W.2d 393,396 (Minn.1996) 6

Minnesota Court of Appeals, File # C7-99-560 5

Misc. Authorities:

Black's Law Dictionary, *6th Edition*. 2

Introduction

In their Brief In Opposition, Rice County lists a number of reasons why they think that the petitioner's Petition for Certiorari should be denied. They are:

(1) that the petitioner did receive timely notice of the trial court's action (it was sent to his Post Office box) and thus, he could have appealed the decision in a timely fashion.

(2) the trial court and clerk's office would have had no idea that he planned an appeal.

Before addressing these two arguments the petitioner would like to address an allegation made by Rice County on the bottom of page 3 of their Respondent's Brief. They say, "In an attempt to mislead the court (Minnesota Court of Appeals), he (the petitioner) did not advise them that the Notice of Filing he supplied in support of his claim was the notice relating to the other child of his ex-wife (born during their marriage), ..." The petitioner was not trying to mislead the court. The petitioner is guilty of assuming too quickly that any notice sent to him applies to his case and is also guilty of not reading the notice and comparing the numbers on it to see if he should really have gotten that notice or it should have gone to someone else. In retrospect, the clerk's office had mailed the petitioner a notice that did not apply to his case and the petitioner did not catch it. Of greater import would be the fact, now stated by Rice County that their court administrator's office sends out notices to people to whom the notices do not apply; and thus it can be logically inferred that, the court administrator's office of Rice County does not send out notices to people to whom the notices should go.

Rice County states that it is to be presumed that the petitioner did receive notice. A presumption is, "an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. A presumption is either conclusive or rebuttable." Black's Law Dictionary, *6th Edition*.

Rice County also makes mention several times that the petitioner used a post office box for a return address. The reason that the petitioner used a post office box is that his residence is not a secure place to receive mail. He lives at a home with other unrelated adults and the mailbox at his home is on the outside of the home. Thus, if he had used his home address, Rice County could have sent him notice and he may not have gotten it. However, when he uses his post office box, he is the only one with a key for it and that key, along with the keys for his home and car are continually in his presence. Thus, he can certify with absolute certainty that he did not receive the notice of the termination of his parental rights until 20 days after his right to appeal that decision had lapsed; because, if that notice had been mailed to him he alone would have had access to it; and, he knows he did not receive it.

Further, he had sought appellate review earlier on this case and was patiently waiting for its adjudication as he was told he would have to do by an Order of the Minnesota Court of Appeals on May 4, 1999. File # C7-99-560.

One final note as to the mailing habits of the Rice County administrator's office. On April, 13, 2000, there was a hearing scheduled relative to the petitioner's children. The petitioner usually received by mail a copy of any order that came from each hearing . When the petitioner did not receive

a copy of an order, he sent the court administrator a letter asking him what had happened. He mailed it on May 21, 2000. When he did not get a reply to that letter, he sent another letter via registered mail on May 31, 2000. He received his original letter back with a handwritten note that the matter had been continued.

Thus, there is evidence aplenty that Rice County is derelict in sending notices: (1) their brief states that the petitioner was supplied a notice that did not pertain to his case; (2) the post office box that the petitioner used in his communications with Rice County was a secure place for him to receive mail and he states unequivocally that he did not receive notice of the court's action until 20 days after the last day he could have appealed the decision; (3) the petitioner has a history of seeking appellate review of what was happening in Rice County, and in particular three points that have not had appellate review to this day; (4) Rice County had failed to communicate what the trial court was doing to the petitioner's children previously, and it had taken a registered letter to get the information.

The presumption Rice County relies on is rebutted by those four facts pertaining to the history of this case.

Rice County states that the trial court and/or the administrator's office would be unaware of any appeal that the petitioner was waiting to pursue. Rice County mentions that there had been other appeals relating to the petitioner's divorce that took place in its and another jurisdiction. That is true. Basically, the petitioner's appeal of the divorce from the other jurisdiction (Ramsey County) was over the granting of custody of his children, who had been living with him, to his

ex-wife who he personally knew to be abusive to the kids. Nowhere has the petitioner ever indicated that he expected a trial judge in Rice County to be aware of any appeal the petitioner made regarding the decisions in Ramsey County other than, because the divorce decree was part of the record in Rice County, the petitioner expected the trial court in Rice County to be aware of the "liberal visitation rights" that had been granted the petitioner.

Rice County also mentions another associated case where the appellant appealed his child support determination to this Court. In that case, this appellant felt that the Rice County CSO was practicing law without a license, and further, that the administrative branch of government was doing something that belonged to the judicial branch and also, he maintained that his wife had been living with him during part of the time that Rice County wanted him to also pay child support to them.

The appellant realizes that this Court will usually defer the interpretation of state law to the state courts and intervention by this Court is very unlikely. However, in that case, too, the appellant felt strongly that Rice County was wrong. This Court, in its wisdom, denied certiorari. However, as mentioned in the letter that is part of the Appendix(p.22), the Minnesota Court of Appeals finally decided just what this petitioner had maintained in his first two claims when they and the Minnesota Supreme Court confirmed Holmberg v. Holmberg, et al., 588 N.W.2d 720 (Minn.1999).

Putting aside the references by Rice County to both the petitioner's appeal of his divorce decree to the Minnesota Appellate Courts and his appeal of his child support determination to this Court, as a smoke screen by Rice County, the question we arrive at is: Is there anything in the record that

would have notified Rice County that there were unresolved issues that the appellant was almost certainly to seek appellate review upon final adjudication of this case by the district court?

There is. On March 29, 1999, the petitioner appealed to the Minnesota Court of Appeals and stated that the two issues he sought appellate review of were:

> "a. Whether Rice County District Court has subject matter jurisdiction to alter the visitation rights of the non-custodial parent when another court is the original source of the divorce and custody decree and the non-custodial parent appeared voluntarily in the Rice County District Court to observe whether he would be granted custody of the children?
> b. Whether Rice County District Court is violating Minn. Stat. §631.52, Subd.1 in refusing to grant the non-custodial, non-abusive parent custody of these children?"
> Minnesota Court of Appeals File # C7-99-560.

On May 4, 1999, the Honorable Judge James C. Harten of the Minnesota Court of Appeals ordered that the appellate review the petitioner sought was "premature" and that the petitioner must await final adjudication in the district court.

Rice County was on notice that the petitioner's appellate review of these questions had to await final adjudication.

Never was it explained to the petitioner in subsequent orders or written communications with Rice County the legal basis for the actions of the district court that the petitioner felt were contrary to law. Nor, had it ever been explained earlier.

CONCLUSION

When reviewing a district court's decision to terminate parental rights, a Minnesota appellate court must determine whether the district court's findings are supported by substantial evidence, and whether the district court's conclusions are clearly erroneous, In re Welfare of L.A.F., 554 N.W.2d 393,396 (Minn.1996).

Seeking appellate review of whether a trial court has jurisdiction over one's person after they have said they do not plan on granting custody of the children to that person is not abandonment of one's children.

Seeking appellate review of the word "parent" in a statute when the trial court has said the word only applies to custodial parents is not abandonment of one's children.

Seeking appellate review of the right of a one court to alter the visitation rights granted a non-custodial parent by the order of another court is not abandonment of one's children.

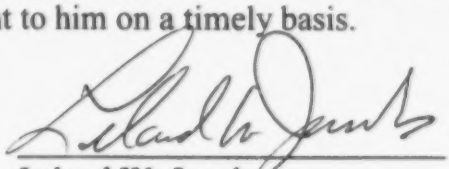
Not appearing before a trial court so that an issue may be preserved for appellate review is not abandonment of one's children.

If a trial court terminates the rights of a parent and the decision will not pass appellate review, what better way to make the decision final than for someone to prevent the parent from being able to appeal that decision?

The petitioner has been denied Due Process and Equal Protection as guaranteed him in the Constitution of the United States. Due Process because he has been denied appellate

review of his Constitutional right to raise his own children. And, he has been denied Equal Protection in this matter because a timely notice was apparently sent to all the other parties but no notice was sent to him on a timely basis.

Dated: February 12, 2002



Leland W. Jacobs, pro se
P.O. Box 40159
Saint Paul, MN 55104-8159
612.384.8744